



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00AZ/LSC/2019/0382**

Property : **First Floor Flat, 85 Courthill Road
London SE13 6DW**

Applicant : **Thi Gai Quach**

Representatives : **-**

Respondent : **G & O Rents Limited**

Representative : **-**

Type of Application : **Reasonableness of and liability for
service charges under the Landlord
and Tenant Act 1985**

Tribunal Members : **Judge Professor Robert M. Abbey
Duncan Jagger MRICS**

**Date and venue of
Paper Based Decision** : **20th January 2020 at 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **20th January 2019**

DECISION

Decisions of the tribunal

1. The tribunal determines that the service charges for the property are reasonable and payable as follows: -

2015

Audit and accountancy charges £Nil

Insurance charges £3711.59, of which the Applicant pays 25% thereof.

Fire safety £49.41, of which the Applicant pays 25% thereof.

Management fee £864, of which the Applicant pays 25% thereof.

2016

Audit and accountancy charges £Nil

Insurance charges £3909.20, of which the Applicant pays 25% thereof

Fire safety £49.41, of which the Applicant pays 25% thereof.

Management fee £897.05, of which the Applicant pays 25% thereof.

2017

Audit and accountancy charges £Nil

Insurance charges £4203.12, of which the Applicant pays 25% thereof

Repairs and maintenance £180, of which the Applicant pays 25% thereof

Fire safety £52.38, of which the Applicant pays 25% thereof.

Management fee £960, of which the Applicant pays 25% thereof.

2018

Audit and accountancy charges £Nil

Insurance charges £3637.84, of which the Applicant pays 25% thereof

Management fee £980.40, of which the Applicant pays 25% thereof.

2019

Audit and accountancy charges £Nil

Insurance charges £3779.43, of which the Applicant pays 25% thereof

Repairs and maintenance No determination

Management fee £980, of which the Applicant pays 25% thereof.

2020

Audit and accountancy charges £Nil

Insurance charges £3636.97, of which the Applicant pays 25% thereof.

Repairs and maintenance £700, of which the Applicant pays 25% thereof

Management fee £980, of which the Applicant pays 25% thereof.

2. The reasons for our decisions are set out below.

The application and procedural background

3. The Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 (“The Act”) as to whether service charges are reasonable and payable.
4. The relevant legal provisions are set out in the Appendix to this decision. Additionally, rights of appeal are set out below in an annex to this decision

The paper based decision

1. The tribunal decided that in view of the limited nature of the application that the decision could be taken on paper and without the cost of an oral hearing. Written submissions were requested of the parties.
2. The tribunal had before it several letters, submissions and copy deeds and documents from the parties to the dispute as well as a formal trial bundle.

The background

3. The applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a 25% service charge, (i.e. a 25% service charge for this leaseholder).
4. The claimed service charges amount to various amounts for the service charges years 2015 to estimated charges for 2020. It is these sums that are in dispute and are the items referred to the tribunal.

The service charges claimed

5. On 12 May 2014 a decision was issued by this Tribunal (under reference LON/00AZ/LSC/2013/0769) with regard to similar issues and involving the same parties and property. At that time the Tribunal decided that the lease of the property permitted management fees but did not permit charges for audit and accountancy fees. This Tribunal, having read that previous decision and having considered the lease terms has decided that it will consider the reasonableness of management fees. However, like the previous Tribunal, this Tribunal will not allow audit and accountancy fees as it cannot find any authority for these charges within the lease terms. Therefore, in each and every occasion where this charge has been raised, these charges are reduced to nil.
6. In the original application the applicant sought to review charges for the period from 2010 to 2014. At the Hearing for Directions held on 5 November 2019 the Procedural Judge Korn pointed out to the applicant that this period had been the subject of review by the Tribunal in the previous decision. Therefore, it was not open to the applicant to seek a repeat determination. In these circumstances this Tribunal will not consider these charges over this period.
7. Having read the submissions from the parties and considered all of the documents provided, the tribunal determines the issue as follows. In regard to the claimed service charges the tribunal finds that the following service charges claimed are reasonable and payable by the applicant
8. Management fee. This charge is disputed for all the years in question. The Tribunal sees management charges in many cases it has before it and believes that the charges made in this case to be at the lower end of the range of fees seen by the Tribunal. In these circumstances the Tribunal is prepared to approve all the charges. With regard to the charge for 2020 this figure of £980 is an estimated charge and the Tribunal approves it on that basis as being a reasonable estimate. The Tribunal bears in mind that the applicant is responsible for 25% of the

charges so for example the 25% payable for 2020 is £245, a figure well within a range the Tribunal might anticipate for a residential property of this type.

9. Fire safety. There are three annual charges in this regard for the provision and servicing of fire extinguishers. Bearing in mind the charge to the applicant is in the region of £12 to £13 per annum, this Tribunal finds these charges to be reasonable and payable for the three years in dispute.
10. Repair and maintenance. The charge for 2017 was £180 of which the applicant was required to pay 25% at £45. This the Tribunal found to be reasonable and payable for water ingress issues to the communal area. For 2019 an estimated charge was raised of £700 but in the actual accounts there were no charges made and therefore the Tribunal makes no determination there being no actual charges to be considered. For 2020 an estimated charge was made of £700 of which the applicant pays 25%. As an estimate of possible charges for maintenance and repairs the Tribunal was of the view that the amount involved was reasonable given the nature of the property and that therefore it is properly payable.
11. Insurance charges. The applicant objects to the level of these charges for all the years in dispute. The Tribunal noted that in the previous decision that the insurance was at that time effected through Genavco Insurance Limited. Also, the Tribunal in 2014 noted from the evidence before it that the respondent received 20% commission from Genavco. The Tribunal at that time assumed that this amount to be pure profit for which the Respondent should account to the applicant when claiming back the insurance premium via its service charge. To reflect this the Tribunal went on to discount the charges by 20%. Unfortunately, in this dispute the Tribunal does not have the benefit of any evidence one way or the other about any commissions and therefore cannot make the same assumption as was made by the previous Tribunal.
12. This Tribunal noted that the figures for insurance charges were not consistent throughout the documentation. To clarify the Tribunal sets out below a table of figures that it considers accurate for the several headings set out.

Applicants figures from application	Actual quotes	Sums demanded	Year end
£5,204.00	£4,639.49	£4,886.51	2015
£5,480.00	£4,886.51	£5,253.90	2016
£5,860.00	£5,253.90	£4,547.31	2017
£5,848.68	£5,447.31	£4,724.29	2018
£5,680.00	£4,724.29	£4,546.22	2019

£5,680.00 £4,546.22 £5,680.00 2020

13. The Tribunal noted that the property was a Victorian property converted into four flats of which one is the first floor flat in the ownership of the applicant. The applicant is of course only responsible for 25% of the above figures. Accordingly, and for example, the applicant may be liable for £1420 in respect of the sum demanded in 2020.
14. The applicant did supply alternative insurance quotes but they were not really like for like as they did not relate to the subject property and were out of date. As to what might be a reasonable premium of charge, the Tribunal noted several decisions that might guide them in deciding the reasonableness of the charges for this property. In the cases of *Berrycroft Management Co Limited v Sinclair Gardens Investment (Kensington) Limited* 1997 1EGLR 47 and *Havenridge Limited v Boston Dyers Limited* [1994] 49 EG 111(CA) it was made clear that the landlord does not have to accept the cheapest quotation but the landlord must insure with a reputable company as would appear to be the case in this dispute. From *Forcelux v Sweetman* [2001] 2 EGLR 173 it is apparent that a landlord should test the market when considering an insurance quote. In this dispute the respondent informed the Tribunal that at renewal every year the respondent's brokers test the market to ensure that the terms quoted are competitive and will provide the wider cover required by the freeholders.
15. The Tribunal were concerned by what they perceived as the high level of premiums that were being charged for a converted four-flat Victorian property. From its own experience with cases and properties in London the Tribunal considered that the insurance premiums for the property were unusually high and not reasonable for properties of this type. The Tribunal decided that a 20% reduction in each case would more properly reflect a reasonable premium and confirms that the following premiums apply for the following years. The 20% reduction has been made to the actual quotes as follows (of which the applicant must pay 25%): -
 - 2015 £3711.59, of which the Applicant pays 25% thereof.
 - 2016 £3909.20, of which the Applicant pays 25% thereof.
 - 2017 £4203.12, of which the Applicant pays 25% thereof.
 - 2018 £3637.84, of which the Applicant pays 25% thereof.
 - 2019 £3779.43, of which the Applicant pays 25% thereof.

2020 £3636.97, of which the Applicant pays 25% thereof.

The Tribunal considers that after this reduction the amounts more properly reflect what might reasonable by expected as an insurance premium for a property of this type.

Application for a S.20c order

16. It is the tribunal's view that it is both just and equitable to make an order pursuant to S. 20c of the Landlord and Tenant Act 1985. The tribunal therefore determines that 50% of the costs incurred by the landlord in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants. Having considered the conduct of the parties and taking into account the determination set out above the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act that 50% of the costs incurred by the respondent in connection with these proceedings should not be taken into account in determining the amount of any service charge payable by the tenant.
17. With regard to the decision relating to s.20C, the Tribunal relied upon the guidance made by HHJ Rich in *Tenants of Langford Court v Doren Limited* (LRX/37/2000) in that it was decided that the decision to be taken was to be just and equitable in all the circumstances. Bearing in mind the determinations made above the Tribunal thought that both parties had won and lost and that therefore an equal division in the order was appropriate. The s.20C decision in this dispute gave the tribunal an opportunity to ensure fair treatment as between landlord and tenant in circumstances where costs have been incurred by the landlord and that it would be just that the tenant should not have to pay them all by way of the service charge.
18. As was clarified in *The Church Commissioners v Derdabi* LRX/29/2011 the tribunal took a robust, broad-brush approach based upon the material before it. The tribunal took into account all relevant factors and circumstances including the complexity of the matters in issue and all the evidence presented.
19. It was apparent to the tribunal that there still charges being levied that the previous Tribunal had said were not payable, i.e. accountancy and audit fees and for this reason it was felt that a 50% order was proportionate. For all these reasons the tribunal has made this decision in regard to this 20C application.

Name: Judge Professor Robert
M. Abbey

Date: 20th January 2020

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,

- (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

20 Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4)The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a)if relevant costs incurred under the agreement exceed an appropriate amount, or

(b)if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5)An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a)an amount prescribed by, or determined in accordance with, the regulations, and

(b)an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6)Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7)Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are

- taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.